

STATE OF NEW YORK

8452--A

IN SENATE

January 31, 2024

Introduced by Sen. RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law and the workers' compensation law, in relation to the issuing of stop-work orders

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "stop work-
2 place abuse today (SWAT) act".

3 § 2. Section 21 of the labor law is amended by adding a new subdivi-
4 sion 17 to read as follows:

5 17. Shall be authorized to issue stop-work orders as a result of a
6 violation of this chapter.

7 § 3. The labor law is amended by adding a new section 21-g to read as
8 follows:

9 § 21-g. Stop-work orders. 1. In addition to any other penalties, reme-
10 di- es or sanctions as provided by this chapter, an employer who violates
11 article six (payment of wages), article nineteen (minimum wage act),
12 article nineteen-A (minimum wage standards and protective labor prac-
13 tices for farm workers), section two hundred twelve-a, section two
14 hundred twelve-b, section one hundred sixty-one or section one hundred
15 sixty-two of this chapter, or any rule or regulation promulgated there-
16 under, and such aggregate amount exceeds one thousand dollars shall be
17 subject to a stop-work order by the commissioner. The commissioner
18 shall also be authorized to issue a stop-work order if the department is
19 made aware of any local, city or federal labor violation relating to
20 payment of wages by an employer and the commissioner deems a stop-work
21 order an appropriate action as a result of such violation.

22 2. A stop-work order against an employer shall apply against any
23 successor firm, corporation, or partnership of the employer in the same
24 manner that it applies to the employer.

25 3. Within seventy-two hours of finding a violation under subdivision
26 one of this section after investigation, the commissioner shall notify

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 such employer in writing of their intention to issue a stop-work order.
 2 Such notice shall: (a) be served in a manner consistent with section
 3 three hundred eight of the civil practice law and rules; (b) notify such
 4 employer of their right to a hearing; (c) notify such employer that they
 5 shall have seventy-two hours to address the violation or violations
 6 before the stop-work order will be issued; and (d) state the factual
 7 basis upon which the commissioner has based their decision to issue a
 8 stop-work order and how such employer shall come into compliance.

9 4. After receipt of such notice, the employer shall have seventy-two
 10 hours to come into compliance and to notify the commissioner of such
 11 compliance. Within seventy-two hours after the employer's opportunity to
 12 come into compliance, if the employer has not come into compliance, the
 13 commissioner shall issue a stop-work order requiring the cessation of
 14 all business operations of the employer at every site at which the
 15 violation occurs.

16 (a) A stop-work order shall take effect when served upon the employer
 17 or when served at the worksite.

18 (b) A stop-work order shall remain in effect until the commissioner
 19 issues an order releasing the stop-work order upon finding that the
 20 employer has come into compliance and has paid any penalty assessed.

21 5. An employer who is subject to a stop-work order shall have the
 22 right to apply to the commissioner, not more than ten days after the
 23 order is issued, for a hearing to contest whether the employer committed
 24 the violation on which the order was based.

25 6. Failure or refusal to comply with a stop-work order issued by the
 26 commissioner shall, in addition to any other penalties authorized by
 27 law, result in the assessment of a penalty of not less than one thousand
 28 dollars and not more than five thousand dollars for each day the employ-
 29 er is found not to be in compliance.

30 7. An employee affected by a stop-work order pursuant to this section
 31 shall be paid their regular rate for the period the stop-work order is
 32 in place or the first ten days the employee would have been scheduled to
 33 work if the stop-work order had not been issued, whichever is less, by
 34 the employer that was served the stop-work order.

35 8. For the purposes of this section, there shall be a rebuttable
 36 presumption of unlawful retaliation if an employer in any manner
 37 discriminates, retaliates, or takes any adverse action against any
 38 employee within ninety days of the employee initiating a complaint
 39 pursuant to this article.

40 § 4. Section 224-b of the labor law, as added by section 2 of part FFF
 41 of chapter 58 of the laws of 2020, is amended to read as follows:

42 § 224-b. Stop-work orders. 1. (a) Where a complaint is received pursu-
 43 ant to this article, or where the fiscal officer or the commissioner
 44 upon [~~his or her~~] their own investigation, finds cause to believe that
 45 any person, in connection with the performance of any contract for
 46 public work pursuant to section two hundred twenty of this article or
 47 any covered project pursuant to section two hundred twenty-four-a of
 48 this article, has substantially and materially failed to comply with or
 49 intentionally evaded the provisions of this [~~article~~] chapter, the
 50 fiscal officer or the commissioner may notify such person in writing of
 51 [~~his or her~~] their intention to issue a stop-work order. Such notice
 52 shall (i) be served within seventy-two hours after making such determi-
 53 nation that notice is required; (ii) be served in a manner consistent
 54 with section three hundred eight of the civil practice law and rules;
 55 [~~(ii)~~] (iii) notify such person of [~~his or her~~] their right to a hear-
 56 ing; and [~~(iii)~~] (iv) state the factual basis upon which the fiscal

1 officer or the commissioner has based [~~his or her~~] their decision to
2 issue a stop-work order. Any documents, reports, or information that
3 form a basis for such decision shall be provided to such person within a
4 reasonable time before the hearing. Such hearing shall be expeditiously
5 conducted.

6 (b) After receipt of such notice, the employer shall have seventy-two
7 hours to come into compliance and to notify the commissioner of such
8 compliance. Within seventy-two hours after the employer's opportunity
9 to come into compliance, the fiscal officer or the commissioner shall
10 issue a stop-work order requiring the cessation of all business oper-
11 ations of the employer at every site at which the violation occurs.

12 (c) Following the hearing, if the fiscal officer or the commissioner
13 issues a continuance of such stop-work order, it shall be served by
14 regular mail, and a second copy may be served by telefacsimile or by
15 electronic mail, with service effective upon receipt of any such order.
16 Such stop-work order shall also be served with regard to a worksite by
17 posting a copy of such order in a conspicuous location at the worksite.
18 The order shall remain in effect until the fiscal officer or the commis-
19 sioner directs that the stop-work order be removed, upon a final deter-
20 mination on the complaint or where such failure to comply or evade has
21 been deemed corrected. If the person against whom such order is issued
22 shall within thirty days after issuance of the stop-work order makes an
23 application in affidavit form for a redetermination review of such order
24 the fiscal officer shall make a decision in writing on the issues raised
25 in such application. The fiscal officer may direct a conditional release
26 from a stop-work order upon a finding that such person has taken mean-
27 ingful and good faith steps to comply with the provisions of this arti-
28 cle.

29 2. Failure or refusal to comply with a stop-work order issued by the
30 fiscal officer or the commissioner shall, in addition to any other
31 penalties provided by law, result in the assessment of a penalty of not
32 less than one thousand dollars and not more than five thousand dollars
33 for each day the employer is found not to be in compliance.

34 § 5. The workers' compensation law is amended by adding a new section
35 142-a to read as follows:

36 § 142-a. Stop-work orders. 1. In addition to any other penalties,
37 remedies or sanctions as provided by this article, an employer who know-
38 ingly fails to provide workers' compensation coverage shall be subject
39 to a stop-work order by the commissioner of labor or the workers'
40 compensation board.

41 2. A violation of subdivision one of this section shall be considered
42 to be "knowing" if the employer:

43 (a) has previously obtained workers' compensation insurance and the
44 insurance has been cancelled or the insurance has not been continued or
45 renewed;

46 (b) has been advised of the need for workers' compensation insurance
47 by the division of workers' compensation or any other agency of the
48 department of labor; or

49 (c) has had one or more previous violations of workers' compensation
50 coverage requirements, including, but not limited to, failure to obtain
51 workers' compensation insurance or to qualify as a self-insuring employ-
52 er.

53 3. A stop-work order against an employer shall apply against any
54 successor firm, corporation, or partnership of the employer in the same
55 manner that it applies to the employer.

1 4. Within seventy-two hours of finding a violation of subdivision one
2 of this section after investigation, the board shall notify such employ-
3 er in writing of their intention to issue a stop-work order. Such notice
4 shall: (a) be served in a manner consistent with section three hundred
5 eight of the civil practice law and rules; (b) notify such employer of
6 their right to a hearing; and (c) state the factual basis upon which the
7 board or the commissioner of labor has based their decision to issue a
8 stop-work order.

9 5. After receipt of such notice, the employer shall have seventy-two
10 hours to come into compliance and to notify the commissioner of such
11 compliance. Within seventy-two hours after the employer's opportunity
12 to come into compliance, the board or the commissioner of labor shall
13 issue a stop-work order requiring the cessation of all business oper-
14 ations of the employer at every site at which the violation occurs.

15 (a) A stop-work order shall take effect when served upon the employer
16 or when served at the worksite.

17 (b) A stop-work order shall remain in effect until the board or the
18 commissioner of labor issues an order releasing the stop-work order upon
19 finding that the employer has come into compliance and has paid any
20 penalty assessed.

21 6. An employer who is subject to a stop-work order shall have the
22 right to apply to the board or the commissioner of labor, not more than
23 ten days after the order is issued, for a hearing to contest whether the
24 employer committed the violation on which the order was based.

25 7. Failure or refusal to comply with a stop-work order issued by the
26 board or the commissioner of labor shall, in addition to any other
27 penalties provided by law, result in the assessment of a penalty of not
28 less than one thousand dollars and not more than five thousand dollars
29 for each day the employer is found not to be in compliance and shall be
30 directed to the workers' compensation fund or the hazard abatement
31 board.

32 § 6. This act shall take effect immediately.